IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

PHILIP J. CHARVAT, on behalf of himself and others similarly situated, **Plaintiff,**	**Case No. 2:16-cv-00120**
	Judge Graham
v.	**Magistrate Judge Jolson**
SHAMPAN LAMPORT, LLC, **Defendant.**	

ORDER

Defendant Shampan Lamport, LLC ("Shampan") moves under Rule 12(b)(6) to dismiss Plaintiff's complaint, or in the alternative, to consolidate it with another case pending before this Court. Because similarities between this case and the other pending case have emerged, the Court will grant the alternative relief Shampan seeks and consolidate this case with the related and earlier-filed case.

I. Background

Plaintiff, Philip Charvat, filed a putative class-action complaint against National Holdings Corporation d/b/a National Securities ("National Holdings"), alleging it violated the Telephone Consumer Protection Act (the "TCPA"), 47 U.S.C. § 227, by placing telemarketing calls to a telephone number Charvat registered on the national Do Not Call Registry. (Compl. at 1, *Charvat v. Nat'l Holdings Corp.*, 14-cv-02205 (S.D. Ohio) (Smith, J.), Doc. 1). That case proceeded before Judge Frost, who denied National Holdings's motion to dismiss. (Op. & Order at 13, *Nat'l Holdings*, 14-cv-02205, Doc. 32). Judge Frost stayed the matter pending an immediate appeal of his order, (Order Administratively Closing Case, *Nat'l Holdings*, 14-cv-02205, Doc. 34), and the Sixth Circuit held the petition for permission to appeal in abeyance due to similar issues being litigated in appeals pending before the United States Supreme Court, (Def.'s Ex. E to Mot. Dismiss at 3, Doc. 15-7).

Charvat then moved to lift the stay for the limited purpose of allowing discovery "to preserve evidence in possession of third parties." (Pl.'s Mot. Reopen Administratively Closed File & Allow Ltd. Disc. to Pres. Evid. in Possession Third Parties at 3, *Nat'l Holdings*, 14-cv-02205, Doc. 35). Judge Frost granted Charvat's motion and directed the clerk to reopen the case "for the limited purpose of allowing Plaintiff to discover the identities of any third-party telemarketers, phone companies, lead generators, or other third parties involved in calling Plaintiff and other members of the putative class, and to allow Plaintiff's counsel to issue subpoenas to those parties." (Op. & Order at 3, *Nat'l Holdings*, 14-cv-02205, Doc. 38). Then, with the *National Holdings* case only open for purposes of this limited discovery, Charvat filed the case against Shampan. (Compl., Feb. 9, 2016). When Judge Frost retired, the *National Holdings* case was transferred to Judge Smith. (Order Reassigning Case, *Nat'l Holdings*, 14-cv-02205, Doc. 41).

Here, Charvat alleges similar violations to those in *National Holdings*. But while Charvat identified this newly filed case as potentially related to *National Holdings*, this Judge and Judge Frost then agreed that the cases were not related. (Related Case Mem. Order, Doc. 4). Now, Shampan moves to dismiss or alternatively to consolidate on the basis that the cases are related.

The cases are similar: they involve related facts, identical plaintiffs, and apparently related defendants. Here, Charvat alleges that Shampan placed telephone calls to his number on August 28, September 5, September 6, September 7, September 19, 2012, and February 27, 2013. (Compl. at ¶ 15). In *National Holdings*, he alleges that he received telemarketing calls on August 28, September 5, September 6, September 7, and September 19, 2012. (Ex. B to Def.'s Mot. Dismiss at ¶ 18, Doc. 15-4). In a declaration that accompanies Shampan's motion to dismiss, its attorney represents that "Shampan was and is the holding company which owns two (2) branch offices of NSC, located in Suffolk and New York counties, New York. Apart from being an operating company for these two branch offices, Shampan conducts no business of its own. Shampan has no employees, generates no revenue, and conducts no securities business *per se*." (Decl. of Timothy Feil, Esq. at ¶ 2, Doc. 15-2). Shampan asserts that all but one of the phone calls alleged here are the same phone calls that serve as the basis for the *National Holdings* claims, because Shampan is little more than a holding company for branch offices of NSC. (*Id.* at ¶ 11).

II. Discussion

The Court will only rule on Shampan's motion to consolidate.

The Federal Rules permit a court to consolidate cases that "involve a common question of law or fact." Fed. R. Civ. P. 42(a). When making a consolidation decision, trial courts consider

> [W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Cantrell v. GAF Corp., 999 F.2d 1007, 1011 (6th Cir. 1993) (alterations in original) (quoting *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)).

Here, the analysis is uncomplicated. Charvat appears to admit as much by concluding that "[c]onsolidation of the Lawsuits is within the Court's Discretion." (Pl.'s Resp. Opp'n at 3, Doc. 20). Both cases unquestionably involve common questions of law or fact. There exist common questions of law: both cases are brought under the TCPA; there exist common questions of fact: from the Feil declaration it appears that the allegedly violative telemarketing calls in each case may be the same phone calls (except for one unique call). The risks here are not of prejudice or possible confusion, but of inconsistent adjudication or double recovery. What's more, Shampan asserts that Chavart only filed this lawsuit as an end-run around the stay of discovery in the *National Holdings* case. The Court makes no judgment as to Chavart's intent in filing this lawsuit, but such assertions would best be handled if the cases were together, and in front of the same judge. Finally, it makes little sense to spend extra judicial resources to have these matters proceed separately.

Charvat argues that the factors favor refusing consolidation. He asserts that "the lawsuits involve different telemarketing campaigns, different causes of action and different temporal limitations." (Pl.'s Resp. Opp'n at 4). But Charvat alleges phone calls placed on the same day by both Defendants, and from the Feil Declaration, it appears those phone calls are likely to be the same phone calls. Furthermore, while the *National Holdings* case includes an additional count—"Violation of the TCPA's Internal Do Not Call List Requirement," (Ex. B to Def.'s Mot. Dismiss at ¶¶ 46–51)—it is predicated on the same conduct allegedly violating the TCPA. Finally, Charvat argues that the cases involve different time periods because in his complaint against Shapman, Charvat alleges one more phone call, received on February 27, 2013. (Compl. at ¶ 15). While the February phone call is unique to this case, it cannot support the separation of these two cases, and consolidating them would not prejudice Chavart's claim about the allegedly violative February call.

Admittedly, the Court at one time determined that these matters were not related. (Related Case Mem. Order). Chavart argues that now, Shampan "moves for a *de facto* reconsideration of this issue." (Pl.'s Resp. Opp'n at 4). But nothing prevents the Court from doing so, particularly since the relationship between the defendants in the two cases has been made clear to the Court. In light of the fact that Shampan operates two NSC branches, it's likely that all but one of the phone calls alleged in each complaint are the same, and it appears that the two companies are related. With these revelations, the Court does now consider the cases related.

III. Conclusion

Defendant's motion to consolidate is **GRANTED**. (Doc. 15). The clerk is directed to transfer the case to Judge Smith's docket. IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: December 15, 2016